

Chapter 18.370
VARIANCES AND ADJUSTMENTS

Sections:

18.370.010 Variances
18.370.020 Adjustments

18.370.010 Variances

A. Purpose. The purpose of this section is to provide standards for the granting of variances from the applicable zoning requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific property, the literal interpretation of the provisions of the applicable zone would cause an undue or unnecessary hardship, except that no use variances shall be granted.

B. Applicability of provisions.

1. The variance standards are intended to apply to individual platted and recorded lots only.
2. An applicant who is proposing to vary a specification standard for lots yet to be created through a subdivision process may not utilize the variance procedure unless otherwise specified in Section 18.730.030, Zero Lot Line Setback Standards, or Chapter 18.430, Subdivisions.

C. Approval process and standards.

1. Variances shall be processed by means of a Type II procedure, as governed by Section 18.390.040, using standards of approval contained in Subsection 2 below.
2. The Director shall approve, approve with conditions, or deny an application for a variance based on finding that the following criteria are satisfied:
 - a. The proposed variance will not be materially detrimental to the purposes of this title, to any other applicable policies and standards, and to other properties in the same zoning district or vicinity;
 - b. There are special circumstances that exist which are peculiar to the lot size or shape, topography or other circumstances over which the applicant has no control, and which are not applicable to other properties in the same zoning district;
 - c. The use proposed will be the same as permitted under this title and City standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;
 - d. Existing physical and natural systems, such as but not limited to traffic, drainage, dramatic land forms or parks will not be adversely affected any more than would occur if the development were developed as specified in the title; and
 - e. The hardship is not self-imposed and the variance requested is the minimum variance which would alleviate the hardship.

3. The Director shall approve, approve with modifications, or deny an application for a subdivision variance subject to the criteria set forth in Section 18.370.010.C.

18.370.020 Adjustments

A. Purpose. The purpose of this section is to establish two classes of special variances:

1. “Development adjustments” which allow modest variation from required development standards within proscribed limits. Because such adjustments are granted using “clear and objective standards,” these can be granted by means of a Type I procedure, as opposed to the more stringent standards of approval and procedure for variances.
2. “Special adjustments” which are variances from development standards which have their own approval criteria as opposed to the standard approval criteria for variances contained in Section 18.370.020.C.

B. Development adjustments.

1. The following development adjustments will be granted by means of a Type I procedure, as governed by Section 18.390.030, using approval criteria contained in Subsection B2 below:
 - a. Front yard setbacks. Up to a 25% reduction of the dimensional standards for the front yard setback required in the base zone. Setback of garages may not be reduced by this provision.
 - b. Interior setbacks. Up to a 20% reduction of the dimensional standards for the side and rear yard setbacks required in the base zone.
 - c. Lot coverage. Up to 5% increase of the maximum lot coverage required in the base zone.
2. Approval criteria. A development adjustment shall be granted if there is a demonstration of compliance with all of the applicable standards:
 - a. A demonstration that the adjustment requested is the least required to achieve the desired effect;
 - b. The adjustment will result in the preservation of trees, if trees are present in the development area;
 - c. The adjustment will not impede adequate emergency access to the site;
 - d. There is not a reasonable alternative to the adjustment which achieves the desired effect.

C. Special adjustments.

1. Adjustments to development standards within subdivisions (Chapter 18.430). The Director shall consider the application for adjustment at the same time he/she considers the preliminary plat. An adjustment may be approved, approved with conditions, or denied provided the Director finds:
 - a. There are special circumstances or conditions affecting the property which are unusual and peculiar to the land as compared to other lands similarly situated;
 - b. The adjustment is necessary for the proper design or function of the subdivision;
 - c. The granting of the adjustment will not be detrimental to the public health, safety, and welfare or injurious to the rights of other owners of property; and
 - d. The adjustment is necessary for the preservation and enjoyment of a substantial property right because of an extraordinary hardship which would result from strict compliance with the regulations of this title.
2. Adjustment to minimum residential density requirements (Chapter 18.510). The Director is authorized to grant an adjustment to the minimum residential density requirements in Section 18.510.040, by means of a Type I procedure, as governed by Section 18.390.030 as follows:
 - a. For development on an infill site as follows:
 - (1) In the R-25 zone, sites of .75 acre or smaller.
 - (2) In the R-40 zone, sites of .75 acre or smaller.
 - b. For development on sites larger than those contained in 1 above, if the applicant can demonstrate by means of detailed site plan that the site is so constrained that the proportional share of the required minimum density cannot be provided and still meet all of the development standards in the underlying zone.
 - c. To be granted an adjustment in either Subsections a or b above, the applicant must demonstrate that the maximum number of residential units are being provided while complying with all applicable development standards in the underlying zone. There is nothing in this section which precludes an applicant for applying to a variance to these standards, as governed by Section 18.370.010.
3. For adjustments to density requirements in Washington Square Regional Center, the standards of Section 18.630.020.E apply.
4. For Modifications to dimensional and minimum density requirements for developments within the Washington Square Regional Center that include or abut designated Water Resource overlay areas, the standards of Section 18.630.020.F apply.

5. Adjustment to access and egress standards (Chapter 18.705).
 - a. In all zoning districts where access and egress drives cannot be readily designed to conform to Code standards within a particular parcel, access with an adjoining property shall be considered. If access in conjunction with another parcel cannot reasonably be achieved, the Director may grant an adjustment to the access requirements of Chapter 18.705 through a Type II procedure, as governed in Section 18.390.030, using approval criteria contained in Subsection 2b below.
 - b. The Director may approve, approve with conditions, or deny a request for an adjustment from the access requirements contained in Chapter 18.705, based on the following criteria:
 - (1) It is not possible to share access;
 - (2) There are no other alternative access points on the street in question or from another street;
 - (3) The access separation requirements cannot be met;
 - (4) The request is the minimum adjustment required to provide adequate access;
 - (5) The approved access or access approved with conditions will result in a safe access; and
 - (6) The visual clearance requirements of Chapter 18.795 will be met.
6. Adjustments to landscaping requirements (Chapter 18.745).
 - a. Adjustment to use of existing trees as street trees. By means of a Type I procedure, as governed by Section 18.390.030, the Director shall approve, approve with conditions, or deny a request for the use of existing trees to meet the street tree requirements in Section 18.745.030 providing there has been no cutting and filling around the tree during construction which may lead to its loss, unless the following can be demonstrated:
 - (1) The ground within the drip-line is altered merely for drainage purposes; and
 - (2) It can be shown that the cut or fill will not damage the roots and will not cause the tree to die.
 - b. Adjustment for street tree requirements. By means of a Type I procedure, as governed by Section 18.390.030, the Director shall approve, approve with conditions, or deny a request for the adjustments to the street tree requirements in Section 18.745.030, based on the following approval criteria:
 - (1) If the location of a proposed tree would cause potential problems with existing utility lines;
 - (2) If the tree would cause visual clearance problems; or
 - (3) If there is not adequate space in which to plant street trees.
7. Adjustments to parking standards (Chapter 18.765).

- a. Reduction from minimum parking requirements. By means of a Type II procedure, as governed by Section 18.390.040, the Director may authorize up to a 20% reduction in the total minimum vehicle parking spaces required in Section 18.765.070.H when an applicant for a development permit can demonstrate in a parking study prepared by a traffic consultant or in parking data from comparable sites that:
 - (1) Use of transit, demand management programs, and/or special characteristics of the customer, client employee or resident population will reduce expected vehicle use and parking space demand for this development, as compared to standards Institute of Transportation Engineers (ITE) vehicle trip generation rates and minimum city parking requirements, and
 - (2) A reduction in parking will not have an adverse impact on adjacent uses.
- b. Reductions in minimum parking requirements in new developments for transit improvements.—The Director may authorize up to a 20% reduction in the total minimum vehicle parking spaces required in Section 18.765.070.H by means of a Type II procedure, as governed by Section 18.390.040, when the applicant:
 - (1) Incorporates transit-related facilities such as bus stops and pull-outs, bus shelters, transit-oriented developments and other transit-related development; and
 - (2) Documents operational characteristics indicating the number of transit users, or number of non-auto users for a particular facility.
- c. Reductions in minimum parking requirements in existing developments for transit improvements. The Director may authorize up to a 10% reduction in the total minimum vehicle parking spaces required in Section 18.765.070.H at a conversion ratio of one space per 100 square feet of transit facility by means of a Type I procedure as governed by Section 18.390.030, when the applicant:
 - (1) Incorporates transit-related facilities such as bus stops and pull-outs, bus shelters, transit-oriented developments and other transit-related development; and
 - (2) Meets the following requirements:
 - (a) A transit facility must be located adjacent to a street with transit service. The facility should be located between the building and front property line, within 20 feet of an existing transit stop, or the facility may include a new transit stop if approved by Tri-Met.
 - (b) A transit facility shall include a covered waiting or sitting area.
- d. Increases in the maximum parking requirements. The Director may approve off-street parking in excess of the maximum allowed parking spaces in Section 18.765.070G by means of a Type II procedure, as governed by Section 18.390.040, when the applicant can demonstrate that all of the following criteria are met:

- (1) The individual characteristics of the use at that location requires more parking than is generally required for a use of this type and intensity;
 - (2) The need for additional parking cannot be reasonably met through provision of on-street parking or shared parking with adjacent or nearby uses; and
 - (3) The site plan shall indicate how the additional parking can be redeveloped to more intensive transit-supportive use in the future.
 - e. Reduction in required bicycle parking. The Director may approve a reduction of required bicycle parking per Section 18.765.050.E by means of Type II procedure, as governed by Section 18.390.040, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.
 - f. Use of alternative parking garage layout. By means of a Type II procedure, as governed by Section 18.390.040, the Director may approve an alternative design of parking garage which differs from the dimensional standards contained in Figure 18.765.2 when it can be shown that 1) the proposed structure meets design guidelines of the Urban Land Institute's (ULI) Dimension of Parking, Current Edition; or 2) a similar structure functions efficiently using proposed modified layout, circulation and dimensions.
 - g. Reduction in length of stacking lane. By means of a Type I procedure, as governed by 18.390.030, the Director may allow a reduction in the amount of vehicle stacking area required in Section 18.765.040.D.2 if such a reduction is deemed appropriate after analysis of the size and location of the development, limited services available and other pertinent factors.
8. Adjustments to sign code (Chapter 18.780).
- a. By means of a Type II procedure, as governed by Section 18.390.040, the Director shall approve, approve with conditions, or deny a request for an adjustment to the sign code based on findings that at least one of the following criteria are satisfied:
 - (1) The proposed adjustment to the height limits in the sign code is necessary to make the sign visible from the street because of the topography of the site, and/or a conforming building or sign on an adjacent property would limit the view of a sign erected on the site in conformance with Chapter 18.780, Signs;
 - (2) A second freestanding sign is necessary to adequately identify a second entrance to a business or premises that is oriented towards a different street frontage;
 - (3) Up to an additional 25% of sign area or height may be permitted when it is determined that the increase will not deter from the purpose of Chapter 18.780, Signs. This increase should be judged according to specific needs and circumstances which necessitate additional area to make the sign sufficiently legible. The increase(s) shall not conflict with any other non-dimensional standards or restrictions of this chapter;
 - (4) The proposed sign is consistent with the criteria set forth in Section 18.780.130.G;

- (5) The proposed exception for a second freestanding sign on an interior lot which is zoned commercial or industrial is appropriate because all of the following apply:
 - (a) The combined height of both signs shall not exceed 150% of the sign height normally allowed for one freestanding sign in the same zoning district; however, neither shall exceed the height normally allowed in the same zoning district;
 - (b) Neither sign will pose a vision clearance problem or will project into the public right-of-way; and
 - (c) Total combined sign area for both signs shall not exceed 150% of what is normally allowed for one freestanding sign in the same zoning district; however, neither shall exceed the height normally allowed in the same zoning district.
- b. In addition to the criteria in Subsection a above, the Director shall review all of the existing or proposed signage for the development and its relationship to the intent and purpose of Chapter 18.780, Signs. As a condition of approval of the adjustment, the Director may require:
 - (1) Removal or alteration of nonconforming signs to achieve compliance with the standards contained in Chapter 18.780, Signs;
 - (2) Removal or alteration of conforming signs to establish a consistent sign design throughout the development; and
 - (3) Application for sign permits for signs erected without permits or removal of such illegal signs.
- 9. Adjustments to setbacks to reduce tree removal (Chapter 18.790). By means of a Type I procedure, as governed by Section 18.390.030, the Director may grant a modification from applicable setback requirements of this Code for the purpose of preserving a tree or trees on the site of proposed development. Such modification may reduce the required setback by up to 50%, but shall not be more than is necessary for the preservation of trees on the site. The setback modification described in this section shall supersede any special setback requirements or exceptions set out elsewhere in this title, including but not limited to Chapter 18.730, except Section 18.730.040.
- 10. Adjustments to wireless communication facilities (Chapter 18.798).
 - a. By means of a Type II procedure, as governed by Section 18.390.040, the Director shall approve, approve with conditions, or deny a request for an adjustment to the requirement that a wireless communication tower be set back at least the height of the tower from any off-site residence based on findings that at the following criteria are satisfied:
 - (1) The proposed location of the tower complies with the setback requirements for the underlying zone in which the property is located;
 - (2) A structural engineer certifies that the tower is designed to collapse within itself;

- (3) Because of topography, vegetation, building orientation and/or other factor, a site closer to an off-site residence will equally or better reduce the visual impacts associated with the tower upon the off-site residence.
 - b. By means of a Type I procedure, as governed by Section 18.390.030, the Director shall approve, approve with conditions, or deny a request for an adjustment to the requirement that a wireless communication tower be located 2,000 feet from another tower in a residential zone or 500 feet from another tower in a non-residential zone based on findings that the following criteria are satisfied:
 - (1) The applicant has fully complied with the collocation protocol as provided in Section 18.798.080; and
 - (2) A registered radio engineer certifies that a more distant location is not technically feasible and/or sites at a more appropriate location are not available; or
 - (3) A location closer than the required separation will reduce visual or other impacts on surrounding uses better than sites beyond the required separation.
11. Adjustments for street improvement requirements (Chapter 18.810). By means of a Type II procedure, as governed by Section 18.390.040, the Director shall approve, approve with conditions, or deny a request for an adjustment to the street improvement requirements, based on findings that the following criterion is satisfied: Strict application of the standards will result in an unacceptably adverse impact on existing development, on the proposed development, or on natural features such as wetlands, bodies of water, significant habitat areas, steep slopes or existing mature trees. In approving an adjustment to the standards, the Director shall determine that the potential adverse impacts exceed the public benefits of strict application of the standards. (Ord. 06-20)■